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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and
Respondent,

v.

DESHAWN N. LUNKIN,

Defendant and
Appellant.

B290518

(Los Angeles County
Super. Ct. No. SA091791)

THE COURT:*

Deshawn N. Lunkin (defendant) appeals from the trial court's order entered following a finding that he was in violation of probation in case No. SA091791. We appointed counsel to represent him on this appeal.

Counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, and requested this court to independently review the record on appeal to determine whether any arguable

issues exist. On February 19, 2019, we sent defendant a letter informing him of the nature of the brief that had been filed and advising him that he had 30 days to file a supplemental brief setting forth issues he wished this court to consider. We have received no response. There is substantial evidence to support the trial court's finding that defendant violated his probation. We affirm the trial court's order.

FACTUAL AND PROCEDURAL BACKGROUND

In February 2016, the People charged defendant with two counts of possessing heroin and cocaine for sale (Health & Safety Code, section 11351)¹ one count of possessing marijuana for sale (§ 11359), one count of possessing methamphetamine for sale (§ 11378), and one count of resisting a peace officer (Pen. Code, § 148, subd. (a)(1)). The People also alleged that defendant suffered four prior drug convictions in 2010, 2011, 2014, and 2015 (§ 11370.2).

In June 2016, defendant entered into a negotiated plea agreement under the terms of which he pleaded no contest to all counts as well as the prior drug convictions, in exchange for a sentence of nine years and four months that would be imposed but its execution stayed. After being given proper advisements, defendant entered his plea. The trial court then sentenced defendant to nine years and four months in state prison, three years of which was attributable to one of the prior drug convictions. The court then suspended the execution of that sentence and placed defendant on three years of formal probation. Defendant did not appeal.

¹ Unless otherwise indicated, all further statutory references are to the Health & Safety Code.

On December 16, 2016, the trial court revoked defendant's probation, issued a bench warrant, and set a probation revocation hearing.

In early January 2017, defendant was arrested for drug trafficking in case number SA094749.

On April 20, 2017, the trial court held the preliminary hearing in case number SA094749, combined with the probation violation hearing in the instant case. At the hearing, Detective Stauffer of the Los Angeles Police Department (LAPD) testified that on January 3, 2017, he executed a search warrant at the Royal Santa Monica Hotel, where defendant was registered as an occupant of room No. 7. Defendant's probation included a search condition and he was detained as he left the hotel. Police found a hotel keycard for room No. 7, and \$1,411 in his jacket pocket. Inside room No. 7, police found a large amount of cocaine and methamphetamine; a small amount of heroin; a digital scale with residue consistent with methamphetamine; empty plastic baggies; defendant's driver's license; and a vehicle rental contract in his name. Detective Stauffer testified that he believed defendant possessed the drugs for sale. He based his opinion on the amount of money recovered from defendant, the scale used to weigh individual amounts, the empty baggies used for packaging, the lack of any paraphernalia to ingest any of the drugs recovered, and the lack of any signs that defendant had ingested any drugs. At the conclusion of the combined hearing, the trial court held there was sufficient evidence to hold defendant to answer in case number SA094749. Based upon its finding in case number SA094749, the trial court found defendant in violation of the terms and conditions of his probation in the instant case.

On October 26, 2017, defendant appeared in pro per. The

trial court ordered termination of defendant's probation and imposed the previously suspended term of nine years and four months, with seven years to be served in county jail and with the remaining two years and four months of post-release mandatory supervision. The People dismissed the pending drug charges filed under case number SA094749.

On August 24, 2018, defendant filed a notice of appeal from the trial court's October 26, 2017 order.²

DISCUSSION

We conclude there is no infirmity in the proceedings resulting in defendant's sentence upon the trial court's finding that he violated his probation in this case. Defendant's plea was valid: He was specifically advised of the rights he waived, specifically advised that the sentence that was imposed would be stayed unless and until he violated the terms of his probation, and was specifically advised that one of the conditions of probation was that he not violate the law. The trial court found that defendant violated his probation following a hearing that functioned as a preliminary examination in the new case and the evidentiary hearing as to the probation violation. A combined hearing is permissible. (See *People v. Coleman* (1975) 13 Cal.3d 867, 895 [unitary preliminary hearing-parole violation hearing satisfies due process]; *People v. King* (1979) 89 Cal.App.3d 506,

² On November 13, 2007, defendant filed a request for certificate of probable cause which was denied by the trial court. On January 10, 2018, defendant's notice of appeal was received by the superior court clerk's office, but not filed. On August 13, 2018, we granted defendant relief from default for failure to file a notice of appeal.

510-511 [same]; *People v. Buford* (1974) 42 Cal.App.3d 975, 981 [same].) What is more, the trial court's finding that defendant violated his probation was supported by substantial evidence insofar as he was found in possession of illegal narcotics and the instruments used to distribute them, which an expert witness confirmed. The trial court then imposed the previously imposed but stayed sentence, which it is statutorily required to do. (Pen. Code, § 1203.2, subd. (c).) Although Senate Bill 180 eliminated the three-year prior drug conviction enhancement that comprises a portion of defendant's sentence (Sen. Bill No. 180, Stats. 2017, ch. 677, § 1, eff. Jan. 1, 2018) and is retroactively applicable to non-final sentences (*In re Estrada* (1965) 63 Cal.2d 740, 742-748), defendant's conviction became final on August 7, 2016 (the date his sentence was imposed but its execution stayed plus 60 days because he did not appeal), which was long before Senate Bill 180 took effect on January 1, 2018. (*People v. Grzyski* (2018) 28 Cal.App.5th 799, 806.)

Although defendant did not submit a supplemental letter on appeal, he offered several grounds for appeal in his requests for a certificate of probable cause. He argued that he is entitled to withdraw his underlying plea in this case, but he has offered no basis for doing so and we perceive none in the record. He argued that his sentencing hearing was unfair and that he is entitled to a supplemental probation report "to inform the Court" about what has happened since the time of his original sentencing, but the sentencing hearing was fair and a supplemental report would have served no purpose because the court was required to impose its previously imposed sentence. Defendant also argued that he did not waive his right to a probation revocation hearing; this argument makes no sense

because defendant *had* just such a hearing.

The order is affirmed.

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*LUI, P.J.,

CHAVEZ, J.,

HOFFSTADT, J.